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मध्यप्रदेश राजपत्र

(असाधारण)

प्राधिकार से प्रकाशित

क्रमांक 288]

भोपाल, गुरुवार, दिनांक 11 जुलाई 2019—आषाढ़ 20, शक 1941

विधि और विधायी कार्य विभाग

भोपाल, दिनांक 11 जुलाई 2019

क्र. 11872-173-इक्कीस-अ (प्रा.).—भारत के संविधान के अनुच्छेद 348 के खण्ड (3) के अनुसरण में, दण्ड विधि (मध्यप्रदेश संशोधन) विधेयक, 2019 (क्रमांक 14 सन् 2019) का अंग्रेजी अनुवाद राज्यपाल के प्राधिकार से एतद्वारा प्रकाशित किया जाता है.

मध्यप्रदेश के राज्यपाल के नाम से तथा आदेशानुसार,
राजेश यादव, अतिरिक्त सचिव.

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**MADHYA PRADESH BILL
NO. 14 OF 2019**

THE CRIMINAL LAW (MADHYA PRADESH AMENDMENT) BILL, 2019

A Bill further to amend the Code of Criminal Procedure, 1973 and the Indian Evidence Act, 1872 in their application to the State of Madhya Pradesh.

Be it enacted by the Madhya Pradesh Legislature in the seventieth year of the Republic of India as follows:—

**CHAPTER I
PRELIMINARY**

1. (1) This Act may be called the Criminal Law (Madhya Pradesh Amendment Act, 2019.

Short title and commencement.
Act, 2019.

- (2) It shall come into force on the date of its publication in the official Gazette.

**CHAPTER II
AMENDMENTS TO THE CODE OF CRIMINAL PROCEDURE, 1973**

2. The Code of Criminal Procedure, 1973 (No.2 of 1974) (hereinafter referred to as the principal Act), shall in its application to the State of Madhya Pradesh be amended in the manner hereinafter provided.

Amendment of Central Act No.2 of 1974 in its application to the State of Madhya Pradesh.

3. In section 126 of the principal Act, in sub-section (1), in clause (c), for full stop, comma shall be substituted and thereafter the following clauses shall be added, namely:—

Amendment of Section 126.

- "(d) where such person or his/her legitimate or illegitimate child referred to in clause (c) of sub-section (1) of Section 125, ordinarily resides,
- (e) where such person or his/her father or mother referred to in clause (d) of sub-section (1) of Section 125, ordinarily resides,
- (f) where such person or his/her grandfather or grandmother referred to in clause (e) of sub-section (1) of Section 125, ordinarily resides."

4. In section 273 of the principal Act,—

Amendment of Section 273.

- (i) for the marginal heading, the following marginal heading shall be substituted, namely:—

"Evidence to be taken in trial or other proceeding.";

- (ii) the opening paragraph shall be numbered as sub-section (1) and for the opening paragraph of sub-section (1) as so numbered, the following paragraph shall be substituted, namely:—

"(1) Except as otherwise expressly provided, all evidence taken in the course of trial or other proceeding shall be recorded in the personal presence of the witness or through the audio-video electronic means and in the personal presence of the accused, or through the audio-video electronic means, or, when his personal attendance is dispensed with, in the presence of his advocate.";

(iii) after sub-section (1), the following new sub-section shall be added, namely—

“(2) The evidence referred to in sub-section (1) shall be recorded in accordance with the rules and guidelines framed by the High Court from time to time.”

Amendment of Section 278.

5. In Section 278 of the principal Act, for sub-section (1), the following sub-section shall be substituted, namely:—

“(1) As the evidence of each witness taken under section 275 or 276 is completed, it shall be read over to him in the presence of the accused, if in attendance, or of his advocate, if he appears by advocate, or in presence of accused through the audio-video electronic means under section 273, and shall, if necessary be corrected.”

Amendment of Section 281.

6. In Section 281 of the principal Act,—

- (i) in sub-section (2), for the words “Whenever the accused is examined by any Magistrate other than a Metropolitan Magistrate, or by a Court of Session”, the words “Whenever the accused is examined in his personal presence or his presence through the audio-video electronic means by any Magistrate other than a Metropolitan Magistrate, or by a Court of Session” shall be substituted;
- (ii) in sub-section (5), for full stop, colon shall be substituted and thereafter the following proviso shall be added, namely:—

“Provided that the signature of the accused would not be necessary if the accused is examined through the audio-video electronic means.”

Amendment of Section 291.

7. In Section 291 of the principal Act, in sub-section (1), for the words “in the presence of the accused”, the words “in the personal presence of the accused or his presence through the audio-video electronic means” shall be substituted.

Amendment of Section 305.

8. In Section 305 of the principal Act,—

- (i) in sub-section (3), for the words “ in the presence of the representative”, the words “ in the personal presence of the representative or his presence through the audio-video electronic means” shall be substituted;
- (ii) for sub-section (4), the following sub-section shall be substituted, namely:—

“(4) Where any representative of a corporation does not appear either personally or through audio-video electronic means, any such requirement as referred to in sub-section (3) shall not apply but if he appears through the audio-video electronic means, then such requirement as referred to in sub-section (3) shall apply.”

Amendment of Section 317.

9. In Section 317 of the principal Act, the following Explanation shall be added, namely:—

“**Explanation.**— For the purpose of this Section “personal attendance of the accused” shall include his attendance through the audio-video electronic means.”

10. In Section 320 of the principal Act, in the table below sub-section (2),-

Amendment of
Section 320.

(i) in column 1, 2 and 3, before Section 312 and entries relating thereto, the following Sections and entries relating thereto shall be inserted, namely:-

1	2	3
"Rioting	147	The person against whom the force or violence is used at the time of committing the offence: Provided that the accused is not charged with other offence which is not compoundable.
Obscene acts or use of obscene words	294	The person to whose annoyance obscene acts were done or obscene words were used.";

(ii) in column 1, 2 and 3, after Section 494 and entries relating thereto, the following Section and entries relating thereto shall be inserted, namely:-

1	2	3
"Husband or relative of husband of a woman subjecting her to cruelty	498A	The woman subjected to cruelty: Provided that a minimum period of six months shall have elapsed from the date of an application for compounding the offence and the court, if satisfied that the compounding is in the interest of that woman, may accept the application provided none of the parties have withdrawn such application in the intervening period";

(iii) in column 1, 2 and 3, after Section 500 and entries relating thereto, the following Section and entries relating thereto shall be inserted, namely:-

1	2	3
"Criminal intimidation if threat to cause death or grievous hurt, etc.	Part II of Section 506	The person against whom the offence of criminal intimidation was committed.".

11. In Section 353 of the principal Act, for sub-section (5), the following sub-section shall be substituted, namely:-

Amendment of
Section 353.

"(5) If the accused is in custody, he shall be brought up to appear in person or through the audio-video electronic means, as the case may be, to hear the judgment pronounced."

**Amendment of
Section 390.****12. In Section 390 of the principal Act,—**

- (i) in the marginal heading, the words “from acquittal” shall be omitted;
- (ii) for the words and figure “When an appeal is presented under section 378, the High Court” the words and figures “When an appeal is presented under proviso to Section 372 or Section 378, the High Court or Court of Session” shall be substituted.

**Amendment of
Section 451.****13. Section 451 of the principal Act shall be numbered as sub-section (1) thereof and after sub-section (1) as so numbered, the following new sub-sections shall be added, namely:—**

- “(2) Notwithstanding anything contained in sub-section (1), no court shall release a motor vehicle involved in an accident resulting in death or bodily injury or damage to property, when such vehicle is not covered by the policy of insurance against third party risks taken in the name of registered owner or when the registered owner fails to furnish copy of such insurance policy despite demand by investigating police officer, unless and until the registered owner furnishes sufficient security to the satisfaction of the court to pay compensation that may be awarded in a claim case arising out of such accident.
- (3) Where the motor vehicle is not covered by a policy of insurance against third party risks, or when registered owner of the motor vehicle fails to furnish copy of such policy in circumstances mentioned in sub-section (2), the motor vehicle shall be sold off in public auction in the prescribed manner, on expiry of three months from the date of the vehicle being taken in possession by the investigating police officer, and proceeds thereof shall be deposited with the Claims Tribunal having jurisdiction over the area in question, within fifteen days for purpose of satisfying the compensation that may have been awarded, or may be awarded in a claim case arising out of such accident.”.

**Amendment of
Section 457.****14. In Section 457 of the principal Act, after sub-section (2), the following new sub-sections shall be added, namely:—**

- “(3) Notwithstanding anything contained in sub-section (1), no court shall release a motor vehicle involved in an accident resulting in death or bodily injury or damage to property, when such vehicle is not covered by the policy of insurance against third party risks taken in the name of registered owner or when the registered owner fails to furnish copy of such insurance policy despite demand by investigating police officer, unless and until the registered owner furnishes sufficient security to the satisfaction of the court to pay compensation that may be awarded in a claim case arising out of such accident.
- (4) Notwithstanding anything contained in sub-section (2), where the motor vehicle is not covered by a policy of insurance against third party risks, or when registered owner of the motor vehicle fails to furnish copy of such policy in circumstances mentioned in sub-section (3), the motor vehicle shall be sold off in public auction in the prescribed manner, on expiry of three months from the date of the vehicle being taken in possession by the investigating police officer, and proceeds thereof shall be deposited with the Claims Tribunal having jurisdiction over the area in question, within fifteen days for purpose of satisfying the compensation that may have been awarded, or may be awarded in a claim case arising out of such accident.”.

15. In the First Schedule to the principal Act, under the heading "I. Offences under the Indian Penal Code", in column 6 against sections 317, 318, 392, 393, 394 and 435 for the words "Court of Session", the words "Magistrate of the First Class" shall be substituted".

Amendment of
the First
Schedule.

Explanation.- For the purpose of this amendment, it is clarified that this amendment shall not affect the trial of the cases pending before Courts of Session.

CHAPTER III AMENDMENT TO THE INDIAN EVIDENCE ACT, 1872

16. The Indian Evidence Act, 1872 (No. 1 of 1872) (hereinafter referred to as the principal Act), shall in its application to the State of Madhya Pradesh be amended in the manner hereinafter provided.

Amendment of
Central Act No.
1 of 1872 in its
application to the
State of Madhya
Pradesh.

17. In Section 65-B of the principal Act, in sub-section (4), for full stop, colon shall be substituted and thereafter the following proviso shall be added, namely:—

Amendment of
Section 65-B.

"Provided that if the Court records the evidence through audio-video electronic means, computer or any other electronic device, the provision of this sub-section shall not apply."

STATEMENT OF OBJECTS AND REASONS

1. Sub-section (1) of Section 126 of the Code of Criminal Procedure, 1973 (No. 2 of 1974) provides the place of institution of proceedings under section 125 of the Code of Criminal Procedure, 1973 but it is not provided where such person covered under clauses (c), (d) and (e) of sub-section (1) of Section 125 will institute proceedings. Therefore, suitable amendment is proposed in Section 126 of the Code.

2. Certain provisions of the Code of Criminal Procedure, 1973 mandates physical presence of accused (under trial) or his pleader for recording evidence or other proceedings. It is observed that due to lack of Police Force, many times the accused (under trials) are not produced before the court on scheduled hearing. Consequently, the case gets adjourned. Due to the advancement of information technology, it is desirable that the deposition of witnesses and examination of accused and other proceedings be taken optionally through the audio-video electronic means, instead of mandatory provision of their physical presence in court. This facility will be effective to cope up with the problem of lack of police force and also be effective for speedy trial of cases. Therefore, suitable amendments are proposed in sections 273, 278, 281, 291, 305, 317 and 353 of the said Code.

3. Recording of evidence through audio-video electronic means will be frustrated if Section 65B of Indian Evidence Act, 1872 (No. 1 of 1872), is not amended. Consequently it is proposed to amend Section 65-B of the Indian Evidence Act, 1872 (No. 1 of 1872) so that if the trial court records the evidence through the audio-video electronic means, computer or any other electronic device, then the provision of sub-section (4) of said section, regarding identification of such electronic record, shall not apply.

4. By the Madhya Pradesh Amendment Act No. 17 of 1999, offences under sections 147, 294 and 506 part II of the Indian Penal Code (No. 45 of 1860) were made compoundable. But by the Criminal Procedure Code (Amendment) Act, 2008 (No. 5 of 2009), the Central Government has substituted the table to sub-section (2) of Section 320 of the Criminal Procedure Code, 1973 wherein the said sections of the Indian Penal Code have not been made compoundable, consequently under the provision of clause (2) of article 254 of the Constitution, the amendment made by the Madhya Pradesh Act No. 17 of 1999 has no force. Consequence is that after compounding the main offences cases are pending for long times unnecessary in the court for adjudication of the aforesaid offences. Therefore, it is desirable to again amend Section 320 of the Code of Criminal Procedure, 1973 to make aforesaid cases compoundable.

5 It is also proposed to make offence under section 498A compoundable due to the reason that the complaint in such offence is the outcome of matrimonial dispute. In spur of moment FIR get lodged. On many occasions after the cognizance of such offence the woman wants to make compromise in such offence but due to lack of provision they have to go a long way to High Court, which creates hindrance in resolving matrimonial dispute. So under some restrictions amendment in sub-section (2) of Section 320 of Criminal Procedure Code, 1973 is proposed.

6. Before year 2005, appeal against acquittal lies only before the High Court. Therefore under 390 of the Criminal Procedure Code, 1973, power to issue warrant to compel the accused is given to High Court. In year 2005, the Criminal Procedure Code, 1973 got amended and accordingly in some cases appeal against the acquittal also lies before the Court of Session. Again in year 2009 the Criminal Procedure Code, 1973 got amended and victim also got right under certain contingencies to prefer an appeal under proviso to Section 372 of the Criminal Procedure Code, 1973. But Section 390 is not amended accordingly. Still Court of Session is not empowered to issue warrant to secure attendance of accused. Therefore, suitable amendment is proposed in Section 390 of the Criminal Procedure Code, 1973.

7. In Civil Appeal No. 9936-9937 of 2016 Usha Devi and other V/s Pawan Kumar and others, the Supreme Court in its order dated 13th September, 2018 has directed the appropriate Government to make suitable law regarding custody and seizure of motor vehicles involved in accident, and which do not have third party insurance. Therefore, it is decided to make suitable amendments in sections 451 and 457 of the Criminal Procedure Code, 1973.

8. In the First Schedule to the Criminal Procedure Code, 1973 the offences under sections 317, 318, 392, 393, 394 and 435 of the Indian Penal Code have been made triable by the Court of Session, by the Madhya Pradesh Amendment Act No. 2 of 2008. Now the Courts of Session have been over burdened with cases and now the cadre of Judicial Magistrates have been raised to ample numbers, and number of cases in the Courts of Magistrate are lower than Courts of Sessions. Therefore, suitable amendment in the First Schedule is proposed to make above offences triable by the Magistrate of the First Class.

9. Hence this Bill.

BHOPAL:
DATED THE 4th JULY 2019

P. C. SHARMA
Member-In- Charge